

**Representative Patricia W. Jones** proposes the following substitute bill:

**ADULT PROTECTIVE SERVICES**

**AMENDMENTS**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Patricia W. Jones**

**This act repeals and reenacts Part 3, Abuse, Neglect, or Exploitation of Disabled Adult, of the Human Services Code. The act also amends the Utah Criminal Code. The act revises and clarifies the definition of certain terms and adds definitions for certain other terms. The act sets forth the purposes, powers, and duties of Adult Protective Services. The act modifies the mandatory reporting law and adds penalties for obstructing investigations and for threatening or intimidating reporters, victims, or witnesses. The act clarifies who may have access to reports and information in the possession of Adult Protective Services. The act provides that a vulnerable adult victim of exploitation has a private right of action against the perpetrator. The act clarifies provisions regarding various petitions that can be filed in district court by Adult Protective Services in behalf of vulnerable adults. The act clarifies that information and records relating to investigations by Adult Protective Services are protected records under Title 63, Chapter 2, Government Records Access and Management Act.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**62A-3-311.1**, as last amended by Chapter 276, Laws of Utah 1999

**63-2-304**, as last amended by Chapters 232 and 335, Laws of Utah 2000

**76-5-111**, as last amended by Chapter 289, Laws of Utah 1997

ENACTS:

**62A-3-313**, Utah Code Annotated 1953



- 26           **62A-3-314**, Utah Code Annotated 1953
- 27           **62A-3-315**, Utah Code Annotated 1953
- 28           **62A-3-316**, Utah Code Annotated 1953
- 29           **62A-3-317**, Utah Code Annotated 1953
- 30           **62A-3-318**, Utah Code Annotated 1953
- 31           **62A-3-319**, Utah Code Annotated 1953
- 32           **62A-3-320**, Utah Code Annotated 1953
- 33           **62A-3-321**, Utah Code Annotated 1953

34 REPEALS AND REENACTS:

- 35           **62A-3-301**, as last amended by Chapter 43, Laws of Utah 2001
- 36           **62A-3-302**, as last amended by Chapter 130, Laws of Utah 1996
- 37           **62A-3-303**, as last amended by Chapter 130, Laws of Utah 1996
- 38           **62A-3-304**, as last amended by Chapter 43, Laws of Utah 2001
- 39           **62A-3-305**, as last amended by Chapter 130, Laws of Utah 1996
- 40           **62A-3-306**, as last amended by Chapter 39, Laws of Utah 1998
- 41           **62A-3-307**, as last amended by Chapter 130, Laws of Utah 1996
- 42           **62A-3-308**, as last amended by Chapter 130, Laws of Utah 1996
- 43           **62A-3-309**, as last amended by Chapter 130, Laws of Utah 1996
- 44           **62A-3-311**, as last amended by Chapters 130 and 248, Laws of Utah 1996
- 45           **62A-3-312**, as last amended by Chapter 130, Laws of Utah 1996

46 *Be it enacted by the Legislature of the state of Utah:*

47           Section 1. Section **62A-3-301** is repealed and reenacted to read:

48                           **Part 3. Abuse, Neglect, or Exploitation of Vulnerable Adults**

49           **62A-3-301. Definitions.**

50           As used in this part:

51           (1) "Abandonment" means any knowing or intentional action or inaction, including  
52 desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the  
53 vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, medical,  
54 or other health care.

55           (2) "Abuse" means:

56           (a) attempting to cause harm, intentionally or knowingly causing harm, or intentionally or

57 knowingly placing another in fear of imminent harm;

58 (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that  
59 causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's orders  
60 or used as an unauthorized substitute for treatment, unless that conduct furthers the health and  
61 safety of the adult;

62 (c) emotional or psychological abuse;

63 (d) sexual offense as described in Title 76, Chapter 5, Offenses Against the Person; or

64 (e) deprivation of life sustaining treatment, except:

65 (i) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or

66 (ii) when informed consent, as defined in Section 76-5-111, has been obtained.

67 (3) "Adult" means a person who is 18 years of age or older.

68 (4) "Adult protection case file" means documents and information contained in the file  
69 maintained by Adult Protective Services on a particular case, including any report or other  
70 notification received by the division or Adult Protective Services.

71 (5) "Adult Protective Services" means the unit within the division responsible to  
72 investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate protective  
73 services.

74 (6) "Caretaker" means any person, entity, corporation, or public institution that assumes  
75 the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision,  
76 medical or other health care, or other necessities. "Caretaker" includes a relative by blood or  
77 marriage, a household member, a person who is employed or who provides volunteer work, or a  
78 person who contracts or is under court order to provide care.

79 (7) "Counsel" means an attorney licensed to practice law in this state.

80 (8) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.

81 (9) "Elder adult" means a person 65 years of age or older.

82 (10) "Emergency" means a circumstance in which a vulnerable adult is at an immediate  
83 risk of death or serious physical injury or is at risk of immediate, serious harm. Risk of immediate,  
84 serious harm includes exploitation that results in the inability of a vulnerable adult to provide funds  
85 for immediate needs, including food, shelter, and necessary medical care.

86 (11) "Emotional or psychological abuse" means intentional or knowing verbal or nonverbal  
87 conduct directed at a vulnerable adult including ridiculing, intimidating, yelling, swearing,

88 threatening, isolating, coercing, harassing, or other forms of intimidating behavior that results or  
89 could result in the vulnerable adult suffering mental anguish or emotional distress, including fear,  
90 humiliation, degradation, agitation, confusion, or isolation.

91 (12) "Exploitation" means the offense described in Subsection 76-5-111(4).

92 (13) "Harm" means pain, mental anguish, emotional distress, hurt, physical or  
93 psychological damage, physical injury, serious physical injury, suffering, or distress inflicted  
94 knowingly or intentionally.

95 (14) "Intimidation" means communication through verbal or nonverbal conduct which  
96 threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision,  
97 health care, or companionship, or which threatens isolation or abuse.

98 (15) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult from  
99 having contact with another person by:

100 (i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,  
101 contrary to the express wishes of the vulnerable adult, including communicating to a visitor that  
102 the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that  
103 communication to be false;

104 (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult from  
105 meeting with a visitor; or

106 (iii) making false or misleading statements to the vulnerable adult in order to induce the  
107 vulnerable adult to refuse to receive communication from visitors or other family members.

108 (b) The term "isolation" does not include an act intended to protect the physical or mental  
109 welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions  
110 of a physician or other professional advisor of the vulnerable adult.

111 (16) "Lacks capacity to consent" has the meaning as provided in Section 76-5-111.

112 (17) "Neglect" means:

113 (a) (i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal  
114 care, or dental, medical or other health care; or

115 (ii) failure to provide protection from health and safety hazards or maltreatment;

116 (b) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with  
117 the degree of care that a reasonable person in a like position would exercise;

118 (c) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent,

119 resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other  
120 services necessary to maintain the vulnerable adult's well being;

121 (d) knowing or intentional failure by a caretaker to carry out a prescribed treatment plan  
122 that causes or is likely to cause harm to the vulnerable adult;

123 (e) self-neglect by the vulnerable adult; or

124 (f) abandonment by a caretaker.

125 (18) "Physical injury" includes damage to any bodily tissue caused by nontherapeutic  
126 conduct, to the extent that the tissue must undergo a healing process in order to be restored to a  
127 sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot be  
128 restored to a sound and healthy condition. Physical injury includes skin bruising, a dislocation,  
129 physical pain, illness, impairment of physical function, a pressure sore, bleeding, malnutrition,  
130 dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling, injury to any  
131 internal organ, or any other physical condition that imperils the health or welfare of a vulnerable  
132 adult and is not a serious physical injury as defined in this section.

133 (19) "Protected person" means a vulnerable adult for whom the court has ordered  
134 protective services, including a vulnerable adult for whom emergency protective services have  
135 been established under the provisions of this chapter.

136 (20) "Protective services" means any services provided by Adult Protective Services to a  
137 vulnerable adult, either with the consent of the vulnerable adult or the vulnerable adult's guardian  
138 or conservator, or by court order, if that adult has been abused, neglected, exploited, or is in a state  
139 of self-neglect; protective services may include:

140 (a) an intake system for receiving and screening reports;

141 (b) investigation of referrals in accordance with statutory and policy guidelines;

142 (c) protective needs assessment;

143 (d) coordination and referral to community resources for services; or

144 (e) short-term, limited services including emergency shelter or respite when family or other  
145 community resources are not available to provide protection.

146 (21) "Self-neglect" means the failure of a vulnerable adult to provide food, water,  
147 medication, health care, shelter, cooling, heating, safety, or other services necessary to maintain  
148 the vulnerable adult's well being when that failure is the result of the adult's mental or physical  
149 impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of

150 self-neglect.

151 (22) "Serious physical injury" has the meaning as provided in Section 76-5-111.

152 (23) "Substantiated" or "substantiation" means a finding, based upon a preponderance of  
153 the evidence, that there is a reasonable basis to conclude that abuse, neglect, or exploitation  
154 occurred, regardless of whether there is an identified perpetrator or current need for protective  
155 services. If more than one allegation is made or identified during the course of the investigation,  
156 any allegation determined to meet the criteria for substantiation requires a case finding of  
157 "substantiated."

158 (24) "Undue influence" occurs when a person uses the person's role, relationship, or power  
159 to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a  
160 vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over  
161 the decision making of the vulnerable adult.

162 (25) "Unsubstantiated" means a finding, based upon a preponderance of the evidence, that  
163 there is insufficient evidence to conclude that abuse, neglect, or exploitation occurred.

164 (26) "Vulnerable adult" means an elder adult, or an adult who has a mental or physical  
165 impairment which substantially affects that person's ability to:

166 (a) provide personal protection;

167 (b) provide necessities such as food, shelter, clothing, or mental or other health care;

168 (c) obtain services necessary for health, safety, or welfare;

169 (d) carry out the activities of daily living;

170 (e) manage the adult's own resources; or

171 (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect,  
172 or exploitation.

173 Section 2. Section **62A-3-302** is repealed and reenacted to read:

174 **62A-3-302. Purpose of Adult Protective Services Program.**

175 Adult Protective Services shall investigate or cause to be investigated reports of alleged  
176 abuse, neglect, or exploitation of vulnerable adults occurring in all settings and, where appropriate,  
177 shall provide short-term, limited protective services with the permission of the affected vulnerable  
178 adult or the guardian or conservator of the vulnerable adult. The division may promulgate rules  
179 and develop procedures and policies to be used in reporting incidents of abuse, neglect, or  
180 exploitation, and in investigating and providing protective services to the extent that funds are

181 appropriated by the Legislature.

182 Section 3. Section **62A-3-303** is repealed and reenacted to read:

183 **62A-3-303. Powers and duties of Adult Protective Services.**

184 In addition to all other powers and duties that Adult Protective Services is given under this  
185 part, Adult Protective Services:

186 (1) shall have access to facilities licensed by or contracting with either the department or  
187 the Department of Health for the purpose of conducting investigations;

188 (2) has authority to receive, upon request, written statements, documents, exhibits, and  
189 other items pertinent to an investigation including medical or financial records of a vulnerable  
190 adult who is the subject of an investigation when:

191 (a) a release of information is provided by the vulnerable adult who does not lack capacity  
192 to consent; or

193 (b) a vulnerable adult lacks the capacity to consent, and an administrative subpoena has  
194 been issued through Adult Protective Services;

195 (3) has authority to institute proceedings in a court of competent jurisdiction to seek relief  
196 necessary to carry out the provisions of this chapter;

197 (4) has authority to require all persons, including family members of a vulnerable adult and  
198 any caretaker, to cooperate with Adult Protective Services in carrying out its duties under this  
199 chapter including conducting investigations and providing protective services;

200 (5) may require all officials, agencies, departments, and political subdivisions of the state  
201 to assist and cooperate within their jurisdictional power with the court, the division, and Adult  
202 Protective Services in furthering the purposes of this chapter;

203 (6) may conduct studies and compile data regarding abuse, neglect and exploitation; and

204 (7) may issue reports and recommendations.

205 Section 4. Section **62A-3-304** is repealed and reenacted to read:

206 **62A-3-304. Cooperation by caretaker.**

207 A caretaker, facility, or other institution may not use its own confidentiality standards as  
208 a basis for failure to:

209 (1) report abuse, neglect, or exploitation of a vulnerable adult in accordance with this  
210 chapter;

211 (2) cooperate with any Adult Protective Services investigation;

212 (3) provide Adult Protective Services with access to records or documents relating to the  
213 vulnerable adult who is the subject of an investigation; or

214 (4) provide evidence in any judicial or administrative proceeding relating to a vulnerable  
215 adult who is the subject of an investigation.

216 Section 5. Section **62A-3-305** is repealed and reenacted to read:

217 **62A-3-305. Reporting requirements -- Immunity -- Violation -- Penalty.**

218 (1) Any person who has reason to believe that any vulnerable adult has been the subject  
219 of abuse, neglect, or exploitation shall immediately notify Adult Protective Services intake or the  
220 nearest law enforcement agency. When the initial report is made to law enforcement, law  
221 enforcement shall immediately notify Adult Protective Services intake. Adult Protective Services  
222 and law enforcement shall coordinate, as appropriate, their efforts to provide protection to the  
223 vulnerable adult.

224 (2) When the initial report or subsequent investigation by Adult Protective Services  
225 indicates that a criminal offense may have occurred against a vulnerable adult, it shall notify the  
226 nearest local law enforcement agency. That law enforcement agency shall initiate an investigation  
227 in cooperation with Adult Protective Services.

228 (3) Anyone who in good faith makes a report or otherwise notifies a law enforcement  
229 agency, the division, or Adult Protective Services of suspected abuse, neglect, or exploitation is  
230 immune from civil and criminal liability in connection with the report or other notification.

231 (4) Any person who willfully fails to report suspected abuse, neglect, or exploitation of  
232 a vulnerable adult is guilty of a class B misdemeanor.

233 (5) Under circumstances not amounting to a violation of Section 76-8-508, a person who  
234 threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report,  
235 a witness, the person who made the report, or any other person cooperating with an investigation  
236 conducted pursuant to this chapter is guilty of a class B misdemeanor.

237 (6) The physician-patient privilege does not constitute grounds for excluding evidence  
238 regarding a vulnerable adult's injuries, or the cause of those injuries, in any judicial or  
239 administrative proceeding resulting from a report made in good faith pursuant to this part.

240 Section 6. Section **62A-3-306** is repealed and reenacted to read:

241 **62A-3-306. Anonymity of reporter.**

242 The identity of any person reporting or otherwise giving notice of allegations of abuse,

243 neglect, or exploitation of a vulnerable adult may not be released to any person other than  
244 employees of the division, except as provided in Section 62A-3-312.

245 Section 7. Section **62A-3-307** is enacted to read:

246 **62A-3-307. Photographing, video, and audio taping.**

247 In order to document or preserve information regarding the alleged abuse, neglect, or  
248 exploitation of a vulnerable adult, if the vulnerable adult consents or lacks capacity to consent law  
249 enforcement or Adult Protective Services investigators may take, or cause to be taken, photographs  
250 or video tape recordings of the trauma or injury visible on the vulnerable adult, or audio or video  
251 tape accounts of the alleged abuse, neglect, or exploitation.

252 Section 8. Section **62A-3-308** is enacted to read:

253 **62A-3-308. Peace officers authority to transport.**

254 (1) A peace officer may remove and transport, or cause to have transported, a vulnerable  
255 adult to an appropriate medical or shelter facility, if the officer has probable cause to believe that  
256 by reason of abuse, neglect, or exploitation there exists emergency exigent circumstances and:

257 (a) the vulnerable adult will suffer serious physical injury or death if not immediately  
258 placed in a safe environment;

259 (b) the vulnerable adult refuses to consent or lacks capacity to consent; and

260 (c) there is not time to notify interested parties or to apply for a warrant or other court  
261 order.

262 (2) The peace officer shall notify Adult Protective Services within four hours of  
263 transporting a vulnerable adult to a medical or shelter facility. Adult Protective Services or the  
264 division shall file a petition with the court for an emergency protective order under Section  
265 62A-3-320 within 24 hours after being notified, not including Saturdays, Sundays, and legal  
266 holidays.

267 Section 9. Section **62A-3-309** is enacted to read:

268 **62A-3-309. Enforcement by division -- Duty of county or district attorney.**

269 (1) It is the duty of the county or district attorney, as appropriate under Sections 17-18-1,  
270 17-18-1.5, and 17-18-1.7, to assist and represent the division and to initiate legal proceedings to  
271 protect vulnerable adults and take appropriate action to prosecute the alleged offenders.

272 (2) When the county or district attorney fails to act upon the request of the division to  
273 provide legal assistance within 30 days of the request, the division may request the attorney general

274 to act and, in the attorney general's discretion, the attorney general may assume the responsibilities  
275 and carry the action forward in place of the county or district attorney.

276 Section 10. Section **62A-3-311** is repealed and reenacted to read:

277 **62A-3-311. Requests for information.**

278 Requests for information contained in an adult protection case file shall be made in writing  
279 to Adult Protective Services. Requests should indicate the specific information requested and the  
280 reason for the request. Notwithstanding the provisions of Title 63, Chapter 2, Government  
281 Records Access and Management Act, nothing may be released in response to a request except as  
282 provided in Section 62A-3-312.

283 Section 11. Section **62A-3-311.1** is amended to read:

284 **62A-3-311.1. Statewide data base -- Restricted use and access.**

285 (1) The division shall maintain a data base for reports of [~~disabled or elder~~] vulnerable  
286 adult abuse, neglect, [emotional or psychological abuse,] or exploitation made pursuant to this part.

287 (2) The data base shall include:

288 (a) the names and identifying data of the abused, neglected, or exploited adult and the  
289 reported abuser;

290 (b) information regarding whether or not the abuse, [~~emotional or psychological abuse,~~]  
291 neglect, or exploitation was substantiated or unsubstantiated; and

292 (c) any other information that may be helpful in furthering the purposes of this part, as  
293 determined by the division, subject to the restrictions of [~~Subsection 62A-3-311(2)] Section~~  
294 62A-3-306.

295 (3) Information obtained from the data base may be used only for:

296 (a) compiling statistical summaries that do not include names or other identifying data;

297 (b) granting or denying licenses or other grants of privilege by the department where  
298 identification as a possible adult abuser may be relevant to the privilege in question, in accordance  
299 with Subsection (4);

300 (c) investigation and action by the Division of Occupational and Professional Licensing  
301 regarding registration of a health care assistant under Title 58, Chapter 62, Health Care Assistant  
302 Registration Act; and

303 (d) licensing purposes by the Bureau of Licensing within the Department of Health, as  
304 provided for in Section 26-21-9.5, in determining whether a person associated with a covered

305 health care facility who provides direct care to [~~disabled or elder~~] vulnerable adults has a  
306 substantiated finding of [~~disabled or elder~~] vulnerable adult abuse, neglect, or exploitation if  
307 identification as a possible perpetrator is relevant to the employment activities of that person.

308 (4) (a) A license or privilege may not be denied under Subsection (3) solely on the basis  
309 of information in the data base.

310 (b) Before a license or privilege may be denied under Subsection (3), the department  
311 taking the action shall conduct a review and provide the person making application for the license  
312 or privilege with notice and an opportunity to be heard in accordance with Title 63, Chapter 46b,  
313 Administrative Procedures Act.

314 Section 12. Section **62A-3-312** is repealed and reenacted to read:

315 **62A-3-312. Access to information in data base.**

316 The records and information contained in the data base and the adult protection case file  
317 are protected records under Title 63, Chapter 2, Government Records Access and Management  
318 Act. However, notwithstanding the provisions of Title 63, Chapter 2, Government Records Access  
319 and Management Act, information and records contained in the data base and in the adult  
320 protection case file are not open to public inspection. Pertinent parts of the data base and the adult  
321 protection case file shall be made available to law enforcement agencies, the attorney general's  
322 office, and county or district attorney's office, and county or district attorney's offices and may be  
323 made available, at the discretion of the division, to:

324 (1) subjects of a report as follows:

325 (a) a vulnerable adult named in a report as a victim of abuse, neglect, or exploitation, or  
326 that adult's attorney or legal guardian; and

327 (b) a person identified in a report as having abused, neglected, or exploited a vulnerable  
328 adult, or that person's attorney; and

329 (2) persons involved in an evaluation or assessment of the vulnerable adult as follows:

330 (a) an employee of the department who is responsible for the evaluation or assessment of  
331 an adult protection case file;

332 (b) a multidisciplinary team approved by the division to assist Adult Protective Services  
333 in the evaluation, assessment, and disposition of a vulnerable adult case;

334 (c) an authorized person or agency providing services to or responsible for the care,  
335 treatment, assessment, or supervision of a vulnerable adult named in the report as a victim, when

336 in the opinion of the division that information will assist in the protection of or provide other  
337 benefits to the victim;

338 (d) a licensing authority for a facility, program, or person providing care to a victim named  
339 in a report;

340 (e) the person or entity that reported the abuse, neglect, or exploitation, as considered  
341 necessary on an individual case basis by the division; and

342 (f) legally authorized protection and advocacy agencies when they represent a victim or  
343 have been requested by the division to assist on a case.

344 Section 13. Section **62A-3-313** is repealed and reenacted to read:

345 **62A-3-313. Penalty for unauthorized release of information.**

346 Any person who willfully permits or aids and abets the release of any report, part of a  
347 report, or other information in violation of this part is guilty of a class B misdemeanor.

348 Section 14. Section **62A-3-314** is enacted to read:

349 **62A-3-314. Private right of action.**

350 (1) A vulnerable adult who suffers harm or financial loss as a result of exploitation has a  
351 private right of action against the perpetrator.

352 (2) Upon the death of a vulnerable adult, any cause of action under this section shall  
353 constitute an asset of the estate of the vulnerable adult.

354 Section 15. Section **62A-3-315** is enacted to read:

355 **62A-3-315. Protective services voluntary unless court ordered.**

356 (1) Vulnerable adults who receive protective services under this part shall do so knowingly  
357 or voluntarily or upon district court order.

358 (2) Protective services may be provided without a court order for a vulnerable adult who  
359 does not lack capacity to consent and who requests or knowingly or voluntarily consents to those  
360 services. Protective services may also be provided for a vulnerable adult whose guardian or  
361 conservator with authority to consent does consent to those services. When short-term, limited  
362 protective services are provided, the division and the recipient, or the recipient's guardian or  
363 conservator, shall execute a written agreement setting forth the purposes and limitations of the  
364 services to be provided. If consent is subsequently withdrawn by the recipient, the recipient's  
365 guardian or conservator, or the court, services, including any investigation, shall cease.

366 (3) The court may order protective services to be provided to a vulnerable adult who does

367 not consent or who lacks capacity to consent to services in accordance with this part.

368 Section 16. Section **62A-3-316** is enacted to read:

369 **62A-3-316. Costs incurred for the provision of protective services.**

370 Costs incurred in providing protective services are the responsibility of the vulnerable adult

371 when:

372 (1) the vulnerable adult is financially able to pay for those services, according to rates  
373 established by the division, and that payment is provided for as part of the written agreement for  
374 services described in Section 62A-3-315;

375 (2) the vulnerable adult to be protected is eligible for those services from another  
376 governmental agency; or

377 (3) the court appoints a guardian or conservator and orders that the costs be paid from the  
378 vulnerable adult's estate.

379 Section 17. Section **62A-3-317** is enacted to read:

380 **62A-3-317. Venue for protective services proceedings.**

381 Venue for all proceedings for protective services under this chapter is in the county where  
382 the vulnerable adult resides or is present.

383 Section 18. Section **62A-3-318** is enacted to read:

384 **62A-3-318. Petition by division for protective services.**

385 (1) If the division determines that a vulnerable adult is in need of protective services but  
386 lacks capacity to consent to protective services, the division may petition the district court for an  
387 order authorizing the division to provide protective services. The petition shall include:

388 (a) the name, address, and age of the adult who is the subject of the petition;

389 (b) the reasonably ascertainable names and addresses of the spouse, parents, adult children,  
390 and caretaker of the adult who is the subject of the petition;

391 (c) the name and address of any court- appointed guardian or conservator for the adult;

392 (d) specific facts sufficient to show that the subject of the petition is a vulnerable adult in  
393 need of protective services; and

394 (e) specific facts sufficient to show that the vulnerable adult lacks capacity to consent.

395 (2) Upon the filing of a petition, the court shall set a date for hearing on the petition. At  
396 least ten days' notice of the petition and the hearing shall be given to the adult who is the subject  
397 of the petition and to each other person identified in Subsection (1)(b) or (c).

398           (3) The notice shall be in plain language and large type, at least 14 font. The notice shall  
399 indicate the time and place of the hearing, the possible adverse consequences to the adult, and a  
400 list of rights as set forth in Subsections (4), (6), and (7). The petition and notice shall be served  
401 personally upon the adult who is the subject of the petition and upon the adult's spouse, caretaker,  
402 and parents if they can be found within the state. Notice to the spouse, caretaker, and parents, if  
403 they cannot be found within the state, and to other persons shall be given by first-class mail,  
404 postage prepaid.

405           (4) The adult who is the subject of the petition shall have the right to be present at the  
406 hearing, unless the adult has knowingly and voluntarily waived the right to be present, or unless  
407 a licensed physician has certified that the adult is physically unable to attend. Waiver shall not be  
408 presumed by nonappearance of the adult, but shall be determined by the court on the basis of  
409 evidence provided to the court.

410           (5) The adult who is the subject of the petition may be examined by a licensed physician  
411 appointed by the court, who shall submit a written report to the court. The adult may be  
412 interviewed by a visitor, as defined in Section 75-5-308, appointed by the court, who shall submit  
413 a written report to the court. The visitor may also interview knowledgeable persons at the division  
414 and others who have knowledge of the adult who is the subject of the petition.

415           (6) The adult who is the subject of the petition has the right to be represented by counsel  
416 at all proceedings before the court. Unless the adult has retained counsel, the court shall appoint  
417 counsel. The fees of the adult's counsel shall be paid by the adult who is the subject of the petition  
418 unless the adult is indigent in which case the division will pay the adult's reasonable attorneys fees.

419           (7) The adult who is the subject of the petition is entitled to present evidence and to  
420 cross-examine witnesses, including any court-appointed physician and visitor. The issues may be  
421 determined at a closed hearing if the adult who is the subject of the petition so requests.

422           (8) Nothing in this section limits proceedings under Title 75, Utah Uniform Probate Code.  
423 Section 19. Section **62A-3-319** is enacted to read:

424           **62A-3-319. Court order for protective services -- Review.**

425           (1) Only upon court order may involuntary protective services be provided to a vulnerable  
426 adult who lacks capacity to consent to services.

427           (2) The court may order protective services if it is satisfied that the adult who is the subject  
428 of the petition under Section 62A-3-318 lacks capacity to consent to services and is in need of

429 protective services. The court shall specifically state the purpose, extent, and limitations of the  
430 protective services, including specific findings of fact and conclusions of law. The court shall  
431 fashion any order so as to place the least possible restrictions on the rights of the vulnerable adult,  
432 consistent with the welfare, safety, and best interests of the adult.

433 (3) Any party to the proceedings may petition the court for modification or dissolution of  
434 the order at any time upon a showing of a material change in circumstances. Any protected person  
435 has the right to petition the court for a rehearing within ten days after the date the order was  
436 entered.

437 Section 20. Section **62A-3-320** is enacted to read:

438 **62A-3-320. Petition for emergency order.**

439 (1) Upon petition therefor, if the court finds that the subject of the petition is a vulnerable  
440 adult, that the adult has no court-appointed guardian or conservator or the guardian or conservator  
441 is not effectively performing the guardian's or conservator's duties, that an emergency exists, and  
442 that the welfare, safety, or best interests of the adult require immediate action, the court may,  
443 without notice, order appropriate protective services. The order shall specifically designate the  
444 protective services which are being approved, together with supporting facts.

445 (2) Protective services authorized in an emergency order may not include hospitalization,  
446 nursing or custodial care, or a change in residence, unless the court specifically finds that the action  
447 is necessary and authorizes the specific protective services in the order.

448 (3) Protective services shall be provided through an emergency order for a period not to  
449 exceed three business days, at which time the order shall expire unless a petition for guardianship,  
450 conservatorship, or other protective services has been filed. If a petition for guardianship,  
451 conservatorship, or other protective services is filed within the three-business-day period, the  
452 emergency order may be continued for as long as 15 days from the date the last petition was filed,  
453 to allow time for a hearing to determine whether the emergency order shall remain in effect.

454 (4) In its emergency order, the court may appoint the petitioner or another interested  
455 person as temporary guardian, in accordance with Section 75-5-310.

456 (5) To implement an emergency order, the court may authorize forcible entry by a peace  
457 officer into the premises where the protected person is residing only upon a showing that voluntary  
458 access into the premises is not possible and that forcible entry is required.

459 Section 21. Section **62A-3-321** is enacted to read:

460           **62A-3-321. Petition for injunctive relief when caretaker refuses to allow services.**

461           (1) When a vulnerable adult is in need of protective services and the caretaker refuses to  
462 allow the provision of those services, the division may petition the court for injunctive relief  
463 prohibiting the caretaker from interfering with the provision of protective services.

464           (2) The division's petition under Subsection (1) shall allege facts sufficient to show that  
465 the vulnerable adult is in need of protective services, that the vulnerable adult either consents or  
466 lacks capacity to consent to those services, and that the caretaker refuses to allow the provision of  
467 those services or to order other appropriate relief.

468           (3) The court may, on appropriate findings and conclusions in accordance with Rule 65A,  
469 Utah Rules of Civil Procedure, issue an order enjoining the caretaker from interfering with the  
470 provision of protective services.

471           (4) The petition under Subsection (1) may be joined with a petition under Section  
472 62A-3-318 or Section 62A-3-320.

473           Section 22. Section **63-2-304** is amended to read:

474           **63-2-304. Protected records.**

475           The following records are protected if properly classified by a governmental entity:

476           (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has  
477 provided the governmental entity with the information specified in Section 63-2-308;

478           (2) commercial information or nonindividual financial information obtained from a person  
479 if:

480           (a) disclosure of the information could reasonably be expected to result in unfair  
481 competitive injury to the person submitting the information or would impair the ability of the  
482 governmental entity to obtain necessary information in the future;

483           (b) the person submitting the information has a greater interest in prohibiting access than  
484 the public in obtaining access; and

485           (c) the person submitting the information has provided the governmental entity with the  
486 information specified in Section 63-2-308;

487           (3) commercial or financial information acquired or prepared by a governmental entity to  
488 the extent that disclosure would lead to financial speculations in currencies, securities, or  
489 commodities that will interfere with a planned transaction by the governmental entity or cause  
490 substantial financial injury to the governmental entity or state economy;

491 (4) records the disclosure of which could cause commercial injury to, or confer a  
492 competitive advantage upon a potential or actual competitor of, a commercial project entity as  
493 defined in Subsection 11-13-3(3);

494 (5) test questions and answers to be used in future license, certification, registration,  
495 employment, or academic examinations;

496 (6) records the disclosure of which would impair governmental procurement proceedings  
497 or give an unfair advantage to any person proposing to enter into a contract or agreement with a  
498 governmental entity, except that this subsection does not restrict the right of a person to see bids  
499 submitted to or by a governmental entity after bidding has closed;

500 (7) records that would identify real property or the appraisal or estimated value of real or  
501 personal property, including intellectual property, under consideration for public acquisition before  
502 any rights to the property are acquired unless:

503 (a) public interest in obtaining access to the information outweighs the governmental  
504 entity's need to acquire the property on the best terms possible;

505 (b) the information has already been disclosed to persons not employed by or under a duty  
506 of confidentiality to the entity;

507 (c) in the case of records that would identify property, potential sellers of the described  
508 property have already learned of the governmental entity's plans to acquire the property; or

509 (d) in the case of records that would identify the appraisal or estimated value of property,  
510 the potential sellers have already learned of the governmental entity's estimated value of the  
511 property;

512 (8) records prepared in contemplation of sale, exchange, lease, rental, or other  
513 compensated transaction of real or personal property including intellectual property, which, if  
514 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of  
515 the subject property, unless:

516 (a) the public interest in access outweighs the interests in restricting access, including the  
517 governmental entity's interest in maximizing the financial benefit of the transaction; or

518 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the  
519 value of the subject property have already been disclosed to persons not employed by or under a  
520 duty of confidentiality to the entity;

521 (9) records created or maintained for civil, criminal, or administrative enforcement

522 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if  
523 release of the records:

524 (a) reasonably could be expected to interfere with investigations undertaken for  
525 enforcement, discipline, licensing, certification, or registration purposes;

526 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement  
527 proceedings;

528 (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

529 (d) reasonably could be expected to disclose the identity of a source who is not generally  
530 known outside of government and, in the case of a record compiled in the course of an  
531 investigation, disclose information furnished by a source not generally known outside of  
532 government if disclosure would compromise the source; or

533 (e) reasonably could be expected to disclose investigative or audit techniques, procedures,  
534 policies, or orders not generally known outside of government if disclosure would interfere with  
535 enforcement or audit efforts;

536 (10) records the disclosure of which would jeopardize the life or safety of an individual;

537 (11) records the disclosure of which would jeopardize the security of governmental  
538 property, governmental programs, or governmental recordkeeping systems from damage, theft, or  
539 other appropriation or use contrary to law or public policy;

540 (12) records that, if disclosed, would jeopardize the security or safety of a correctional  
541 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere  
542 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

543 (13) records that, if disclosed, would reveal recommendations made to the Board of  
544 Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board  
545 of Pardons and Parole, or the Department of Human Services that are based on the employee's or  
546 contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

547 (14) records and audit workpapers that identify audit, collection, and operational  
548 procedures and methods used by the State Tax Commission, if disclosure would interfere with  
549 audits or collections;

550 (15) records of a governmental audit agency relating to an ongoing or planned audit until  
551 the final audit is released;

552 (16) records prepared by or on behalf of a governmental entity solely in anticipation of

553 litigation that are not available under the rules of discovery;

554 (17) records disclosing an attorney's work product, including the mental impressions or  
555 legal theories of an attorney or other representative of a governmental entity concerning litigation;

556 (18) records of communications between a governmental entity and an attorney  
557 representing, retained, or employed by the governmental entity if the communications would be  
558 privileged as provided in Section 78-24-8;

559 (19) personal files of a legislator, including personal correspondence to or from a member  
560 of the Legislature, but not correspondence that gives notice of legislative action or policy;

561 (20) (a) records in the custody or control of the Office of Legislative Research and General  
562 Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or  
563 contemplated course of action before the legislator has elected to support the legislation or course  
564 of action, or made the legislation or course of action public; and

565 (b) for purposes of this subsection, a "Request For Legislation" submitted to the Office of  
566 Legislative Research and General Counsel is a public document unless a legislator submits the  
567 "Request For Legislation" with a request that it be maintained as a protected record until such time  
568 as the legislator elects to make the legislation or course of action public;

569 (21) research requests from legislators to the Office of Legislative Research and General  
570 Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response  
571 to these requests;

572 (22) drafts, unless otherwise classified as public;

573 (23) records concerning a governmental entity's strategy about collective bargaining or  
574 pending litigation;

575 (24) records of investigations of loss occurrences and analyses of loss occurrences that  
576 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured  
577 Employers' Fund, or similar divisions in other governmental entities;

578 (25) records, other than personnel evaluations, that contain a personal recommendation  
579 concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal  
580 privacy, or disclosure is not in the public interest;

581 (26) records that reveal the location of historic, prehistoric, paleontological, or biological  
582 resources that if known would jeopardize the security of those resources or of valuable historic,  
583 scientific, educational, or cultural information;

584 (27) records of independent state agencies if the disclosure of the records would conflict  
585 with the fiduciary obligations of the agency;

586 (28) records of a public institution of higher education regarding tenure evaluations,  
587 appointments, applications for admissions, retention decisions, and promotions, which could be  
588 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public  
589 Meetings, provided that records of the final decisions about tenure, appointments, retention,  
590 promotions, or those students admitted, may not be classified as protected under this section;

591 (29) records of the governor's office, including budget recommendations, legislative  
592 proposals, and policy statements, that if disclosed would reveal the governor's contemplated  
593 policies or contemplated courses of action before the governor has implemented or rejected those  
594 policies or courses of action or made them public;

595 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,  
596 revenue estimates, and fiscal notes of proposed legislation before issuance of the final  
597 recommendations in these areas;

598 (31) records provided by the United States or by a government entity outside the state that  
599 are given to the governmental entity with a requirement that they be managed as protected records  
600 if the providing entity certifies that the record would not be subject to public disclosure if retained  
601 by it;

602 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body  
603 except as provided in Section 52-4-7;

604 (33) records that would reveal the contents of settlement negotiations but not including  
605 final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

606 (34) memoranda prepared by staff and used in the decision-making process by an  
607 administrative law judge, a member of the Board of Pardons and Parole, or a member of any other  
608 body charged by law with performing a quasi-judicial function;

609 (35) records that would reveal negotiations regarding assistance or incentives offered by  
610 or requested from a governmental entity for the purpose of encouraging a person to expand or  
611 locate a business in Utah, but only if disclosure would result in actual economic harm to the person  
612 or place the governmental entity at a competitive disadvantage, but this section may not be used  
613 to restrict access to a record evidencing a final contract;

614 (36) materials to which access must be limited for purposes of securing or maintaining the

615 governmental entity's proprietary protection of intellectual property rights including patents,  
616 copyrights, and trade secrets;

617 (37) the name of a donor or a prospective donor to a governmental entity, including a  
618 public institution of higher education, and other information concerning the donation that could  
619 reasonably be expected to reveal the identity of the donor, provided that:

620 (a) the donor requests anonymity in writing;

621 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be  
622 classified protected by the governmental entity under this Subsection (37); and

623 (c) except for public institutions of higher education, the governmental unit to which the  
624 donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no  
625 regulatory or legislative authority over the donor, a member of his immediate family, or any entity  
626 owned or controlled by the donor or his immediate family;

627 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13;

628 (39) a notification of workers' compensation insurance coverage described in Section  
629 34A-2-205; ~~and~~

630 (40) the following records of a public institution of education, which have been developed,  
631 discovered, or received by or on behalf of faculty, staff, employees, or students of the institution:  
632 unpublished lecture notes, unpublished research notes and data, unpublished manuscripts, creative  
633 works in process, scholarly correspondence, and confidential information contained in research  
634 proposals. Nothing in this Subsection (40) shall be construed to affect the ownership of a  
635 record~~[-]; and~~

636 (41) information contained in the data base described in Section 62A-3-311.1.

637 Section 23. Section **76-5-111** is amended to read:

638 **76-5-111. Abuse, neglect, or exploitation of a vulnerable adult -- Penalties.**

639 (1) As used in this section:

640 (a) "Abandonment" means a knowing or intentional action or inaction, including desertion,  
641 by a person or entity acting as a caretaker for a vulnerable adult that leaves the vulnerable adult  
642 without the means or ability to obtain necessary food, clothing, shelter, or medical or other health  
643 care.

644 [~~a~~] (b) "Abuse" means:

645 (i) attempting to cause harm, [~~or~~] intentionally or knowingly causing [~~physical~~] harm, or

646 intentionally or knowingly placing another in fear of imminent harm;

647 [~~(ii) placing another in fear of imminent physical harm;~~]

648 [~~(iii)~~] (ii) causing physical injury [~~caused~~] by knowing or intentional acts or omissions;

649 [~~(iv) unlawful detention or unreasonable confinement;~~]

650 [~~(v) gross lewdness; or~~]

651 (iii) unreasonable or inappropriate use of physical restraint, medication, or isolation that

652 causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's orders

653 or used as an unauthorized substitute for treatment, unless that conduct furthers the health and

654 safety of the adult;

655 [~~(vi)~~] (iv) deprivation of life-sustaining treatment, except:

656 (A) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or

657 (B) when informed consent, as defined in this section, has been obtained.

658 [~~(b)~~] (c) "Business relationship" means a relationship between two or more individuals or  
659 entities where there exists an oral or written agreement for the exchange of goods or services.

660 [~~(c)~~] (d) "Caretaker" means any person [~~, corporation, or public institution that has~~  
661 ~~assumed by relationship, contract, or court order~~], entity, corporation, or public institution that  
662 assumes the responsibility to provide a [~~disabled or elder~~] vulnerable adult with care, food, shelter,  
663 clothing, supervision, medical or other health care, or other necessities. "Caretaker" includes a  
664 relative by blood or marriage, a household member, a person who is employed or who provides  
665 volunteer work, or a person who contracts or is under court order to provide care.

666 [~~(d)~~] (e) "Deception" means:

667 (i) a misrepresentation or concealment:

668 (A) of a material fact relating to services rendered, disposition of property, or use of  
669 property intended to benefit a [~~disabled or elder~~] vulnerable adult;

670 (B) of the terms of a contract or agreement entered into with a [~~disabled or elder~~]  
671 vulnerable adult; or

672 (C) relating to the existing or preexisting condition of any property involved in a contract  
673 or agreement entered into with a [~~disabled or elder~~] vulnerable adult; or

674 (ii) the use or employment of any misrepresentation, false pretense, or false promise in  
675 order to induce, encourage, or solicit a [~~disabled or elder~~] vulnerable adult to enter into a contract  
676 or agreement.

677 ~~[(e) "Disabled adult" means a person 18 years of age or older who is impaired because of~~  
 678 ~~mental illness, mental deficiency, physical illness or disability, or other cause to the extent that the~~  
 679 ~~person lacks sufficient understanding or capacity to make or communicate informed decisions~~  
 680 ~~concerning his person, or is unable to care for his own personal safety or provide necessities such~~  
 681 ~~as food, shelter, clothing, or medical care, without which physical injury or illness may occur. A~~  
 682 ~~person who is, in good faith, under treatment solely of a spiritual means, through prayer, in~~  
 683 ~~accordance with the tenets and practices of a recognized church or religious denomination, and by~~  
 684 ~~an accredited practitioner thereof, shall not be considered a disabled adult for that reason alone.]~~

685 (f) "Elder adult" means a person [who is] 65 years of age or older.

686 (g) "Endeavor" means to attempt or try.

687 (h) "Exploitation" means the offense described in Subsection (4).

688 (i) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological  
 689 damage, physical injury, suffering, or distress inflicted knowingly or intentionally.

690 ~~[(h)]~~ (j) "Informed consent" means:

691 (i) a written expression by the person or authorized by the person, stating that ~~[he]~~ the  
 692 person fully understands the potential risks and benefits of the withdrawal of food, water,  
 693 medication, medical services, shelter, cooling, heating, or other services necessary to maintain  
 694 minimum physical or mental health, and that ~~[he]~~ the person desires that the services be  
 695 withdrawn. A written expression is valid only if the person is of sound mind when the consent is  
 696 given, and the consent is witnessed by at least two individuals who do not benefit from the  
 697 withdrawal of services; or

698 (ii) consent to withdraw food, water, medication, medical services, shelter, cooling,  
 699 heating, or other services necessary to maintain minimum physical or mental health, as permitted  
 700 by court order.

701 ~~[(i)]~~ (k) "Intimidation" means communication ~~[by word or act to a disabled or elder adult~~  
 702 ~~that he will be deprived]~~ conveyed through verbal or nonverbal conduct which threatens  
 703 deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, ~~[or medical~~  
 704 ~~services, or that he will suffer physical violence]~~ health care, or companionship, or which threatens  
 705 isolation or harm.

706 (l) (i) "Isolation" means knowingly or intentionally preventing a vulnerable adult from  
 707 having contact with another person by:

708 (A) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,  
709 contrary to the express wishes of the vulnerable adult, including communicating to a visitor that  
710 the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that  
711 communication to be false;

712 (B) physically restraining the vulnerable adult in order to prevent the vulnerable adult from  
713 meeting with a visitor; or

714 (C) making false or misleading statements to the vulnerable adult in order to induce the  
715 vulnerable adult to refuse to receive communication from visitors or other family members.

716 (ii) The term "isolation" does not include an act intended to protect the physical or mental  
717 welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions  
718 of a physician or other professional advisor of the vulnerable adult.

719 [(j)] (m) "Lacks capacity to consent" means an impairment by reason of mental illness,  
720 developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs,  
721 chronic intoxication, short-term memory loss, or other cause to the extent that a ~~[disabled or elder]~~  
722 vulnerable adult lacks sufficient understanding of the nature or consequences of decisions  
723 concerning [his] the adult's person or property.

724 [(k)] (n) "Neglect" means:

725 (i) ~~[the]~~ failure of a caretaker to provide ~~[habilitation, care,]~~ nutrition, clothing, shelter,  
726 supervision, ~~[or medical]~~ personal care, or dental or other health care, or failure to provide  
727 protection from health and safety hazards or maltreatment; [or]

728 (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with  
729 the degree of care that a reasonable person in a like position would exercise;

730 [(i)] (iii) a pattern of conduct by a caretaker, without the ~~[disabled or elder]~~ vulnerable  
731 adult's informed consent, resulting in deprivation of food, water, medication, [medical services]  
732 health care, shelter, cooling, heating, or other services necessary to maintain [minimum physical  
733 or mental health.] the vulnerable adult's well being;

734 (iv) intentional failure by a caretaker to carry out a prescribed treatment plan that results  
735 or could result in physical injury or physical harm; or

736 (v) abandonment by a caretaker.

737 [(f)] (o) "Physical injury" ~~[means the impairment of physical condition and includes any]~~  
738 includes damage to any bodily tissue caused by nontherapeutic conduct, to the extent that the tissue

739 must undergo a healing process in order to be restored to a sound and healthy condition, or damage  
 740 to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy  
 741 condition. "Physical injury" includes skin bruising, a dislocation, physical pain, illness,  
 742 impairment of physical function, a pressure [sores] sore, bleeding, malnutrition, dehydration,  
 743 [burns] a burn, a bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal  
 744 organ, or any other physical condition that imperils the health or welfare of the [disabled or elder]  
 745 vulnerable adult and [that] is not a serious physical injury as defined in this section.

746 ~~[(m)]~~ (p) "Position of trust and confidence" means the position of a person who:

747 (i) is a parent, spouse, adult child, or other relative by blood or marriage of a ~~[disabled or~~  
 748 ~~elder]~~ vulnerable adult;

749 (ii) is a joint tenant or tenant in common with a ~~[disabled or elder]~~ vulnerable adult;

750 (iii) has a legal or fiduciary relationship with a ~~[disabled or elder]~~ vulnerable adult,

751 including a court-appointed or voluntary guardian, trustee, attorney, or conservator; or

752 (iv) is a caretaker of a ~~[disabled or elder]~~ vulnerable adult.

753 ~~[(n)]~~ (q) "Serious physical injury" means any physical injury or set of physical injuries that:

754 (i) seriously impairs a ~~[disabled or elder]~~ vulnerable adult's health;

755 (ii) was caused by use of a dangerous weapon as defined in Section 76-1-601;

756 (iii) involves physical torture or causes serious emotional harm to a ~~[disabled or elder]~~  
 757 vulnerable adult; or

758 (iv) ~~[creates]~~ creates a reasonable risk of death.

759 ~~[(o)]~~ (r) "Sexual exploitation" means the production, distribution, possession, or  
 760 possession with the intent to distribute material or a live performance depicting a nude or partially  
 761 nude ~~[disabled or elder]~~ vulnerable adult who lacks the capacity to consent, for the purpose of  
 762 sexual arousal of any person.

763 (s) "Undue influence" occurs when a person uses the person's role, relationship, or power  
 764 to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a  
 765 vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over  
 766 the decision making of the vulnerable adult.

767 (t) "Vulnerable adult" means an elder adult, or an adult 18 years of age or older who has  
 768 a mental or physical impairment which substantially affects that person's ability to:

769 (i) provide personal protection;

770 (ii) provide necessities such as food, shelter, clothing, or medical or other health care;

771 (iii) obtain services necessary for health, safety, or welfare;

772 (iv) carry out the activities of daily living;

773 (v) manage the adult's own resources; or

774 (vi) comprehend the nature and consequences of remaining in a situation of abuse, neglect,  
775 or exploitation.

776 (2) Under any circumstances likely to produce death or serious physical injury, any person,  
777 including a caretaker, who causes a [~~disabled or elder~~] vulnerable adult to suffer serious physical  
778 injury or, having the care or custody of a [~~disabled or elder~~] vulnerable adult, causes or permits that  
779 adult's person or health to be injured, or causes or permits a [~~disabled or elder~~] vulnerable adult  
780 to be placed in a situation where [~~his~~] the adult's person or health is endangered, is guilty of the  
781 offense of aggravated abuse of a [~~disabled or elder~~] vulnerable adult as follows:

782 (a) if done intentionally or knowingly, the offense is a second degree felony;

783 (b) if done recklessly, the offense is third degree felony; and

784 (c) if done with criminal negligence, the offense is a class A misdemeanor.

785 (3) Under circumstances other than those likely to produce death or serious physical injury  
786 any person, including a caretaker, who causes a [~~disabled or elder~~] vulnerable adult to suffer  
787 [~~physical injury~~] harm, abuse, or neglect[;]; or, having the care or custody of a [~~disabled or elder~~]  
788 vulnerable adult, causes or permits that adult's person or health to be injured, abused, or neglected,  
789 or causes or permits a [~~disabled or elder~~] vulnerable adult to be placed in a situation where [~~his~~]  
790 the adult's person or health is endangered, is guilty of the offense of abuse of a [~~disabled or elder~~]  
791 vulnerable adult as follows:

792 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;

793 (b) if done recklessly, the offense is a class B misdemeanor; and

794 (c) if done with criminal negligence, the offense is a class C misdemeanor.

795 (4) (a) A person commits the offense of exploitation of a [~~disabled or elder~~] vulnerable  
796 adult when the person:

797 (i) is in a position of trust and confidence, or has a business relationship, with the [~~disabled~~  
798 ~~or elder~~] vulnerable adult or has undue influence over the vulnerable adult and knowingly, by  
799 deception or intimidation, obtains or uses, or endeavors to obtain or use, the [~~disabled or elder~~]  
800 vulnerable adult's funds, credit, assets, or other property with the intent to temporarily or

801 permanently deprive the ~~[disabled or elder]~~ vulnerable adult of the use, benefit, or possession of  
802 ~~[his]~~ the adult's property, for the benefit of someone other than the ~~[disabled or elder]~~ vulnerable  
803 adult;

804 (ii) knows or should know that the ~~[disabled or elder]~~ vulnerable adult lacks the capacity  
805 to consent, and obtains or uses, or endeavors to obtain or use, or assists another in obtaining or  
806 using or endeavoring to obtain or use, the ~~[disabled or elder]~~ vulnerable adult's funds, assets, or  
807 property with the intent to temporarily or permanently deprive the ~~[disabled or elder]~~ vulnerable  
808 adult of the use, benefit, or possession of his property for the benefit of someone other than the  
809 ~~[disabled or elder]~~ vulnerable adult;

810 (iii) unjustly or improperly uses or manages the resources of a ~~[disabled or elder]~~  
811 vulnerable adult for the profit or advantage of someone other than the ~~[disabled or elder]~~  
812 vulnerable adult;

813 (iv) unjustly or improperly uses a ~~[disabled or elder]~~ vulnerable adult's power of attorney  
814 or guardianship for the profit or advantage of someone other than the ~~[disabled or elder]~~ vulnerable  
815 adult;

816 (v) involves a ~~[disabled or elder]~~ vulnerable adult who lacks the capacity to consent in the  
817 facilitation or furtherance of any criminal activity; or

818 (vi) commits sexual exploitation of a ~~[disabled or elder]~~ vulnerable adult.

819 (b) A person is guilty of the offense of exploitation of a ~~[disabled or elder]~~ vulnerable adult  
820 as follows:

821 (i) if done intentionally or knowingly and the aggregate value of the resources used or the  
822 profit made is or exceeds \$5,000, the offense is a second degree felony;

823 (ii) if done intentionally or knowingly and the aggregate value of the resources used or the  
824 profit made is less than \$5,000 or cannot be determined, the offense is a third degree felony;

825 (iii) if done recklessly, the offense is a class A misdemeanor; or

826 (iv) if done with criminal negligence, the offense is a class B misdemeanor.

827 (5) It does not constitute a defense to a prosecution for any violation of this section that  
828 the accused did not know the age of the victim.